



PLANNING COMMISSION STAFF REPORT OCTOBER 18, 2012

Project:	MISSION HILLS SWIM AND TENNIS CLUB PRELIMINARY PLANNED DISTRICT (PLN2012-00241)
Proposal:	To consider a Preliminary Planned District to establish a new private swim and tennis club.
Recommendation:	Recommend approval to the City Council based upon findings.
Location:	10 East Las Palmas Avenue in the Mission San Jose Community Plan Area. APN 525-0312-050-00 (See aerial photo next page)
Area:	12.72-acre lot
People:	Dwane Kennedy, Fremont Mission Hills, LLC and CityShapers, Applicant Peter Pfau and Dwight Long, Pfau Long Architecture, Architect Michael Kuykendall, SANDIS Civil Engineers, Engineer Sarah Gronquist, SGLA, Landscape Architect Sheena Chang, Fremont Mission Hills, LLC, Property Owner Joel Pullen, Staff Planner (510) 494-4436; jpullen@fremont.gov
Environmental Review:	A Draft Environmental Impact Report (Draft EIR) and Final EIR have been prepared and circulated for this project in accordance with the requirements of the California Environmental Quality Act (CEQA).
General Plan:	Existing: Kimber Study Area (K-S)
Zoning:	Existing: Planned District P-73-1 Proposed: <u>Preliminary Planned District P-2012-241</u>

EXECUTIVE SUMMARY

In December 2011, the City Council adopted a comprehensive General Plan Update and established the Kimber Study Area on the subject property for a period of one year to allow the property owner time to process a development application. Initially, a Preliminary Planned District (PPD) application was submitted to allow development of 18 residential units and a Draft EIR was prepared for the proposed project. However, during the 45-day public review period for the Draft EIR, the applicant submitted a revised project for a new private swim and tennis club. Staff has reviewed the revised project for general acceptability of the land uses and their interrelationship, prepared a Final EIR that includes analysis of an alternative consistent with the revised project, and recommends that the Planning Commission recommend approval of the PPD to the City Council, including the establishment of PPD Regulations and Design Guidelines for the future facility.



Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.



SURROUNDING LAND USES

Northwest:	Single-family houses across Almeria Avenue, P-73-1 (Planned District)
Northeast:	Hillside across Canyon Heights Drive, P-73-1
Southwest:	Offices and Single-family houses along the neck of East Las Palmas Avenue, P-73-1
Southeast:	Single-family houses across East Las Palmas Avenue, P-73-1

BACKGROUND AND PREVIOUS ACTIONS

The subject property is a parcel roughly situated in the center of Planned District P-73-1, which is located on the site of a former chicken hatchery operated for many years by the Kimber family. In 1973, Shapell Industries applied for a General Plan Amendment and Rezoning of the Kimber Farms property to allow residential development. At that time, the parcel contained a shallow lake fed by runoff from farm operations and the surrounding hillside. Shapell proposed retaining the lake parcel as private recreational space for a surrounding neighborhood of single-family homes, and dedicating the hillside portion of the property as natural public open space. Records reflect that at the time the application was considered, there were multiple discussions about whether the recreational space would be privately or publicly owned and maintained. At one point, there was consideration of requiring a homeowners' association to maintain the lake and recreational property, then referred to as "the lake/park area." Minutes from an August 7, 1973 City Council meeting note that a motion was made and approved to "designate the lake/park area as a private ownership park with limited public access provided the provision could be made to expand the swim and racquet club from eight to 12 tennis courts and possible construction of a future restaurant to provide the economic basis necessary for maintenance of the lake/park." Ultimately, the General Plan designation for the entire Kimber property was changed to "Low Density Residential – 2.35 du/acre" and Planned District P-73-1 was adopted on September 18, 1973, based on the concept of retaining the lake/park area as privately owned recreational space.

A tennis club with seven courts and a clubhouse was constructed on the parcel shortly after development of the surrounding single-family homes. Shapell sold the parcel to a private owner to develop and operate the recreational facilities and maintain the lake. (Ownership of the parcel has changed a number of times over the years.) One of the unanticipated consequences of the development was that the paths of the water sources that fed the lake were altered, so the owner was unable maintain its water level. In 1987, after years of contentious hearings related to the owner's failure or inability to maintain the lake, the City approved an application to enlarge the existing clubhouse and eliminate the lake, and imposed conditions requiring on-going landscape maintenance of the property. The restaurant was never constructed, and the tennis club was expanded by six courts in the late 1990s to its current thirteen courts.

The parcel is roughly divided by the existing club building and tennis courts on the western side, and undeveloped, natural land on the eastern side (where the former lake was located). In 2009, the current property owner applied for a Preliminary Review Procedure to build 44 residential units on the eastern portion of the parcel, including the area with the six newest tennis courts. During review of the project, staff determined that, although the underlying General Plan land use designation for the project site was low-density residential, allowable uses of the parcel were governed by its zoning designation, P-73-1, which did not contemplate residential uses. As part of the comprehensive General Plan Update then in progress, staff proposed that the land use designation of the parcel be changed to "Private Open Space" to reflect the precise plan approved for the site and to eliminate any ambiguities over the land use designation. Notwithstanding, in November 2011, the property owner submitted a revised application for residential development to build 26 dwelling units on the eastern portion of the parcel.

The comprehensive General Plan Update, including the staff recommendation to change the land use designation of the parcel from Low Density Residential, 2 to 3.5 dwelling units/acre, to Private Open Space, was considered by the City Council in December 2011. The property owner asked that the designation remain unchanged so she could pursue the application for residential development without having to process a General Plan Amendment. Neighboring property owners and residents supported the

re-designation to Private Open Space because they objected to residential development on the parcel. In response, the City Council established an interim land use designation (“Kimber Study Area” (K-S)) on the site to allow the owner to process the development application without having to apply for a General Plan Amendment.

The K-S designation is effective until December 14, 2012. City Council Resolution No. 2011-69 that adopted the Kimber Study Area with the General Plan Update is attached as Informational 4. It provides:

“An interim land use designation entitled “Kimber Study Area (K-S)” is added to the General Plan, applying to Lot 342 of Tract 3542 (APN 525-0312-050), a 12.78 acre parcel commonly referred to as the Mission Hills Tennis Club parcel, or Kimber Park. The K-S designation allows private open space uses and includes the possibility of some residential development. This designation is intended to allow the owner of Lot 342 to process an application for residential development on the parcel without the need for a general plan amendment. The K-S designation will be effective for 12 months from the date of the 2035 General Plan adoption. It allows the owner to apply for approval of a project incorporating residential development with a density no greater than two dwelling units per gross acre. If an application is approved during that time, the City will conform the Land Use Map to reflect the approved designation. (If the applicant is proceeding in good faith, as determined by the sole discretion of the Community Development Director, but the application process is not completed within 12 months, the Director may extend the K-S designation to allow for the conclusion of the process.) If the application is not approved, or not processed within that period, the parcel will be designated Private Open Space without further action, and the Land Use Map so conformed.

Background: Lot 342 is part of Planned District P-73-1; it is located in the center of a neighborhood and has a tennis club and courts located on a portion of it, the rest is undeveloped open space. The 1991 General Plan designation for the parcel is “Low Density Residential - 2-3.5 du/acre,” which is being eliminated as part of the general plan update. Lot 342 was designated “Private Open Space” in the draft General Plan to reflect the parcel’s existing status. However, the owner of the parcel has applied for a major amendment to the P district to construct 26 single-family homes on the undeveloped portion of the parcel. Major amendments to P districts are re-zones requiring adoption of an ordinance. The K-S designation does not authorize or control whether the City Council will approve any residential units on the parcel, it simply allows consideration of the application without a general plan amendment. Whether any residential development should be permitted on Lot 342 is the subject of great controversy in the neighborhood; it is hoped that the interim designation will facilitate negotiations amongst the interested stakeholders to come up with a mutually acceptable plan for future use of the site, which may or may not include residential units.”

In response to the Council’s action, residents formed a “Save Kimber Park” committee and circulated a petition for a proposed initiative entitled “The Protect Fremont Private Open Space Initiative of 2012,” which was submitted to the City on May 29, 2012. The initiative proposed to amend the General Plan to add a policy that would prohibit the conversion of land designated as Private Open Space to another use absent either: 1) a determination by the City Council that failure to redesignate the land would constitute an unlawful taking of private property; or 2) approval of the change by the voters at a regular municipal election.

In reviewing the petition in the context of the recently adopted General Plan Update, staff identified a number of concerns related to its impact on properties designated as Private Open Space. As part of the General Plan Update, a former distinction between “general” open space and “private” open space had been eliminated, so that all privately held open space was designated as Private Open Space. This included uses beyond private open space areas, such as recreational facilities, cemeteries, public and quasi-public facilities, as well as properties with existing single-family homes. In order to prevent unintended consequences from application of the initiative to such uses, the Council amended the General Plan to add an additional open space designation entitled “General Open Space” to allow for more developed open space uses, and retained the “Private Open Space” designation for more undeveloped uses. The Council also amended the land use map to re-designate certain properties from Private Open Space to General Open Space, Hill Face Open Space, or Resource Conservation and Public Open Space. After certification of the initiative petition, the Council exercised its option to adopt the initiative rather than submitting it to the voters.

The owner has modified the development proposal over the past several months; the application currently under consideration is for approval of a Preliminary Planned District to establish a private only swim and tennis club that would replace in part the existing swim and tennis club. As proposed, the club building and recreational facilities would be located on the western and central portions of the parcel where the existing facilities are located. The eastern one-third of the site would remain relatively undeveloped. If the proposed application is approved, under the existing K-S General Plan designation, the General Plan land use map would be conformed to reflect the approval. Consistent with current General Plan designations as described above, this means that the western two-thirds of the parcel would be designated General Open Space, and the eastern third would be designated Private Open Space.

PROCEDURE FOR TONIGHT’S HEARING

At tonight’s hearing, the Planning Commission is charged with completing the following task:

1. Consider a request for a Preliminary Planned District to establish a private swim and tennis club subject to findings specified in Fremont Municipal Code Section 8-21812(a).

PROJECT DESCRIPTION

The applicant proposes a Preliminary Planned District for a private swim and tennis club with associated uses on approximately 8.8 acres. The plans call for demolition of the majority of the existing 6,030-square-foot club building, and retaining a 1,150-square-foot community meeting room to be integrated into a new approximately 40,000-square-foot club building. A new swimming pool and lawn area are proposed adjacent to the club building. A 2,700-square-foot aquatics center with two pools would be located in the central portion of the site. The existing vehicular circulation pattern would generally remain, with the southerly access driveway moved eastward along East Las Palmas Driveway to align with Dolerita Avenue. A new 64-space parking lot would be provided between the new club building and the central tennis courts and aquatic center. The eastern portion of the site (approximately 3.9 acres) would remain undeveloped privately owned open space, and all of the existing trees would remain.

Club Building

The proposed club building would occupy the footprint of the existing building and four tennis courts. The new two-story, 40,000-square-foot club building would contain a 3,500-square-foot fitness center, 1,200-square-foot kids recreation center and lounge, 1,150-square-foot community room, 3,000 square

feet of spa and associated area, 4,500 square feet of kitchen and dining area, and 4,000-square-foot business center with conference rooms. On the second floor, nine overnight lodging rooms, would be provided. The approximately 10,000 square feet remaining would be dedicated to lobbies, circulation, and other common areas. Additionally, the existing pool would be replaced.

Aquatic Center

A 2,700-square-foot aquatic center and two new swimming pools would be constructed in place of the two most northeasterly tennis courts. The one-story aquatic center would contain approximately 1,000 square feet of locker rooms/restrooms, with a 750-square-foot party and yoga room and a 400-square-foot juice and snack bar. The rest of the structure would be devoted to common area and the mechanical room.

Tennis Courts

Seven of the 13 existing tennis courts would remain – three courts at the far western edge of the property, and four courts near the aquatic center in the central portion of the site.

Private Open Space

The eastern one-third (approximately 3.9 acres) of the site would remain undeveloped. A garden is proposed in this area to provide produce for the on-site kitchen and dining function.

The scope of review for a Preliminary Planned District is limited to that of the general appropriateness of the mix of uses and the interrelationship among them. The applicant's Planned District Justification Statement and additional materials (Informational Enclosure 1) include details about the proposed club, operational parameters, and development goals.

PROJECT ANALYSIS

General Plan Conformance

The existing General Plan land use designation for the project site is Kimber Study Area (K-S). The proposed project is consistent with the existing K-S designation because it allows private open space uses. The proposed uses are consistent with private open space uses, as defined in the zoning code. In accordance with the Kimber Study Area, if a project is approved on the site, the City will conform the land use to the most appropriate General Plan designation. If the Preliminary Planned District being considered tonight is ultimately approved by City Council, the eastern portion of the site will be designated Private Open Space, and the western portion will be designated General Open Space. If a project is not approved, the land use designation will become Private Open Space.

Additionally, the proposed project would be consistent with the following relevant General Plan Policies:

Policy 2-1.2: A Complete City – Plan and develop Fremont's available land supply in a way that achieves a balance between jobs and housing, matches future jobs to the capabilities of the local workforce, and provides an array of shopping choices, recreational choices, and entertainment and cultural facilities, thereby reducing the need for residents to travel outside the City.

Analysis: The proposed swim and tennis club would provide a multi-faceted recreational facility to add to the local choices available to residents.

Policy 2-2.14: Maintaining and Improving Development Continuity – Integrate new large-scale development projects into the fabric of the existing community rather than allowing such projects to be self-contained, walled off or physically divided from surrounding uses. New development should be viewed as an opportunity to improve connectivity between neighborhoods. To the extent feasible, circulation systems and open spaces in such developments should tie into existing streets and open spaces on the perimeter. In addition, existing development should be retrofitted over time to reduce unnecessary walls and barriers and improve pedestrian connections between neighborhoods.

Analysis: The proposed development would incorporate pedestrian pathways within and across the site, and a sidewalk would be required on the perimeter. General neighborhood connectivity would be enhanced through development of the facility.

Policy 4-1.2: Neighborhoods – Maintain and enhance Fremont’s identity as a city of neighborhoods. Planning and design decisions should define neighborhood edges and gateways, build neighborhood pride and recognition, and strengthen the physical qualities that make each neighborhood distinctive. The intent is to preserve the desirable qualities of each neighborhood while allowing them to evolve, grow, and adapt over time.

Analysis: The subject parcel is a distinct component of the Kimber neighborhood. This proposal would maintain the site’s well-treed park-like character while allowing the use to adapt to market conditions by enhancing the existing club and adding amenities.

Policy 2-3.3: Neighborhood Centers – Enhance or create identifiable “centers” in each neighborhood which serve as local gathering places. Neighborhood centers may take a variety of forms. These may be civic uses such as parks, community centers, or schools; local shopping areas; or any other common ground where residents can congregate.

Analysis: The new swim and tennis club facility would include a 1,150-square-foot community room (a retained portion of the existing club) that the applicant proposes to make available for the surrounding community’s use to maintain a reservable meeting place for the Kimber neighborhood.

Policy 2-3.7: Green Neighborhoods – Integrate open space, parks, street trees, landscaping, and natural features into Fremont’s neighborhoods to enhance their visual quality and improve access to nature and recreation. The maintenance and improvement of Fremont’s parks, greenbelts, medians, flood control channels, urban forest, and other “green” features should be seen as an important part of the City’s efforts to address climate change by utilizing trees to sequester carbon from the atmosphere. The City strongly encourages tree planting on private property. Trees are recognized as contributing to the attractiveness and livability of the City. They are an effective buffering tool for adjoining land uses and will be an important part of Fremont’s climate strategy.

Policy 7-1.8: Urban Forest – Promote and protect the urban forest and maintain healthy tree resources within the City.

Analysis: The applicant has laid out the site plan with the specific intent of preserving existing trees. The site plan shows all existing trees and setbacks from trees in relation to proposed buildings. Maintenance of the mature trees on this site as proposed would provide an important visual buffer improving the view of the site from the surrounding neighborhood.

Policy 2-6.7: Environmentally Sensitive Use of Open Space – Regulate recreational and public facility development on lands designated as open space to conserve the overall character of such sites and minimize impacts on recreational activities, mature landscaping, and environmentally sensitive areas.

Analysis: While not presently designated as Open Space in the General Plan, the site's character is that of an open space area occupied by a recreational facility. The proposed swim and tennis club facility is located within the site, and can be designed in a way that conserves the open space character of the site in that the mature trees throughout the site are planned to be retained, a substantial buffer from the edge of the site is planned, and neighborhood connectivity will be enhanced in a way that allows continued experience of the site's character by the neighborhood.

Policy 6-6.4: Lodging, Restaurants, and Meeting Facilities – Encourage the development of quality lodging, restaurants, and meeting facilities to meet the needs of business, local residents and their guests and to bring visitors to the community.

Analysis: The private club would contain dining, conference, business center, and lodging facilities limited to members and guests. While not of the scale of a new hotel, for example, the proposed facility would provide such a venue as an option for City residents.

Zoning Regulations

Per Fremont Municipal Code (FMC) Section 8-21811(d) (Standards and Requirements for P Districts), standards for proposed P districts are governed by the most similar zoning district. The Planning Commission and City Council may allow exceptions to these zoning district standards when they find that such exceptions encourage a desirable living environment and are warranted in terms of the total proposed development.

For the purposes of this project, analysis has been performed based on the Open Space District. As set forth in Article 17.1 of the FMC, allowed uses within the Open Space District vary based upon the underlying General Plan land use designation – General, Private, Hill Face, Hill, and Institutional Open Space. Although the current K-S General Plan land use designation does not relate to a particular zoning district, the proposed project most closely reflects uses permitted in the Open Space District.

Subject to a Conditional Use Permit, FMC Section 8-21713.1(c)(1) (Uses on Lands Designated Open Space on the General Plan Land Use Diagram) allows “*Outdoor recreational uses, including golf courses, driving ranges, marinas and other similar commercial recreational facilities, but not including drive-in movie theaters, or any facility where the principal use is enclosed in a building. Incidental to such open space recreational uses there may also be permitted restaurants and commercial uses ancillary to permitted uses.*” The proposed swim and tennis club with three pools and seven tennis courts would constitute a primarily outdoor use. A kitchen and dining area and other commercial uses are also proposed that would be ancillary to the outdoor recreational uses. Thus, the proposed project would be consistent with the above-described conditionally permitted use. The applicant has submitted examples of other recreational facilities (attached as Informational Enclosure 3) with summary information about their similar operations in relation to the components proposed herein. Staff recommends that the proposed swim and tennis club is an appropriate use of the subject property given its unique characteristics, including size, topography and existing vegetation that would provide screening of on-site buildings and ensure compatibility with the surrounding neighborhood.

Parking

The conceptual project plans shows 107 parking spaces. Section 8-22003 of the FMC (Required parking spaces by type of use) specifies parking requirements for various uses, but the City does not have a standard applicable to a facility such as this. Final scale of the development, its operational characteristics, and other as-yet-undefined plan details will determine the appropriate parking calculation. The applicant has submitted examples of comparable facilities (Informational Enclosure 3) with widely varying provision for parking. Site-specific considerations of the Precise Planned District and Conditional Use Permit may include unique membership categories, operation of certain functions at opposite times, providing additional parking or reducing building size, providing parking without enlarging the disturbed area, providing off-site shuttles to serve certain uses, or otherwise modifying/eliminating certain components of the operation. A parking study including a survey of similar facilities is recommended to be required in order to establish the appropriate parking count for the Precise Planned District and Conditional Use Permit.

Design Analysis

Site Planning

As noted above, the majority of the existing club building would be demolished, and the new club building and aquatic center would be generally placed in areas already disturbed by the existing development. The expanded parking lot would extend into an existing lawn area. The applicant's stated site planning objective is to stay within existing developed areas to the extent possible. The drive aisle arching through the site with parking on its edge would remain similar to that which currently exists, with the southern driveway being relocated easterly to line up with Dolerita Avenue.

The buildings would be located in two general areas on either side of the drive aisle. To the west, the proposed club building would be arranged in a 'C' shape around a new pool, with fitness, spa, dining, and meeting room facilities on the bottom floor, and lodging facilities on the upper floor. All but 1,150 square feet of the existing club building, the four existing tennis courts closest to the club building, and the existing swimming pool would be demolished to make space for the new building. The three existing tennis courts closest to the intersection of East Las Palmas Avenue and Almeria Avenue would remain in their current form. On the east side of the drive aisle, four of the six existing tennis courts would remain, with the new aquatic center and two pools to be constructed in place of the northeasterly two courts, and the new 64-space parking lot placed on the south side of the four remaining tennis courts.

Architecture

No architecture is required for a Preliminary Planned District. However, Preliminary Planned District Regulations and Design Guidelines are recommended to ensure that the future architecture is compatible with the surroundings and the setting.

Landscape Architecture

The site is well-treed, and the applicant's stated objective is to retain all trees on-site. Understory planting has not been designed at this time. Primary landscape features include retention of the existing pedestrian and bicycle path across the northwestern edge of the property, provision of a new pedestrian path shaped like a "figure eight" encircling the club facilities, a new trail traversing the site across the eastern end of the aquatic center, and an eight-fold path south of the new club building. Overall, the site's landscape character is that of a recreational club facility nestled within the trees.

Green Building Technologies

The applicant has expressed an interest in exceeding code-required green building standards through LEED certification. In addition to standard building code requirements, LEED Silver certification would be required per the recommended Preliminary Planned District Regulations and Design Guidelines.

Street Right-of-way Dedication and Improvements

The proposed development is located on property bounded by East Las Palmas Avenue, Almeria Avenue, and Canyon Heights Drive, which are collector streets with right-of-way widths of 60 feet and curb-to-curb widths of 40 feet. Improvements to the right-of-way will be determined during Precise Planned District review.

Pedestrian Circulation and Sidewalk Improvements

An existing asphalt pedestrian and bicycle access path would be retained in its current location meandering along the northern edge of the property. This path connects to a crosswalk at the neck of East Las Palmas Avenue, and connects to Canyon Heights Drive at its eastern end. Within the site, a pedestrian path is proposed in a figure-eight pattern surrounding the two areas of development, and centered on the entry feature for the club and expanded parking area. Sidewalks, which were not required during original development of the club on the site, may be required for a portion or all of the site as determined by the final scale of the new development's improvements during Precise Planned District review and approval.

Private Open Space

The applicant has left a 3.9-acre area on the eastern third of the site undeveloped except for the garden serving the dining use. Staff recommends placing an open space easement over this area to prevent future development.

Grading and Drainage

The site slopes up from Mission Boulevard at Las Palmas Avenue intersection to Canyon Heights Drive at the base of the hills. Elevations generally vary from 66 feet at Las Palmas Avenue intersection to 100 feet at the northern boundary along Canyon Heights. Most of the area proposed for development would be within the footprint of existing buildings and tennis courts with the exception of a new parking lot that would encroach into a natural earthen channel traversing the property from north to south. The existing earthen conveyance channel would have to be realigned to maintain the overland storm flows through the property. The upper one-third of the site along Canyon Heights would not be graded with the exception of sidewalk construction along the fronting public street on the south side. If the total grading exceeds 1,000 cubic yards, Planning Commission approval of a Preliminary Grading Plan would be required in addition to the Precise Planned District and Conditional Use Permit.

Urban Runoff Clean Water Program

The Municipal Regional Stormwater NPDES Permit (MRP) requires all new and redevelopment projects to incorporate measures to prevent pollutants from being conveyed in stormwater runoff and into the public storm drain system. This project would be required to comply with the MRP by incorporating source controls and treatment measures into the project design. Since the project involves creating or replacing more than one acre of impervious surface and since the site is located within areas susceptible to hydromodification, the project would also be required to provide mitigation for hydromodification. Feasibility of the stormwater or hydromodification design is not within the scope of this application.

Geologic Hazards

The project site is within an Earthquake Induced Liquefaction Zone on the official Seismic Hazard Zone maps, released by the State Geologist. In accordance with the State law, the project geotechnical engineer would be required to prepare a seismic hazard report with building permit plans. The report would be reviewed and approved by the City and filed with the State Geologist. The project improvements and building construction must conform to the recommendations of the seismic hazard report.

FINDINGS FOR APPROVAL

In order to approve the proposed Preliminary Planned District, the project must be found consistent with the General Plan and Zoning Ordinance. Per FMC 8-21812(a) (Preliminary Site Plan Approval), *“Approval in principle of the preliminary site plan shall be limited to the general acceptability of the land uses proposed and their interrelationship, and shall not be construed to endorse precise location of uses, configuration of parcels or engineering feasibility, and such approval shall not be construed as or deemed to be in any form or sense a commitment by the City to approve any subsequent formal rezoning application.”* In accordance with the scope of a Preliminary Planned District, and based on the above analysis, staff finds the proposed Preliminary Planned District is in conformance with General Plan and Zoning Ordinance and recommends the following findings:

Preliminary Planned District Establishment Findings

- a. Based upon development review timelines and estimated construction duration based upon the preliminary scope of improvements, the proposed P district can be substantially completed within four years of the establishment of the P district;
- b. Each individual unit of development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability because the proposed swim and tennis club can be designed to operate as either one club or as two separate facilities, which will be determined when detailed development plans are submitted for Precise Planned District and Conditional Use Permit approval. Adequate assurance will be provided through the Preliminary Planned District Regulations, Design Guidelines, and Conditions, attached to this report, and subsequent Precise Planned District and Conditional Use Permit entitlements, that such objective will be attained. Furthermore, the proposed project will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved under other zoning districts because development of a larger private swim and tennis club on this uniquely situated property where a smaller club currently exists would enhance the services offered to the community and can be designed and used consistently with the community context in a way that retains the site's trees and maintains the quality of the surrounding natural environment;
- c. The streets and thoroughfares that presently exist (no new streets or thoroughfares are proposed) are suitable and adequate to carry anticipated traffic, and increased development intensity would not generate traffic in such amounts as to overload the street network outside the P district as documented in the Draft and Final EIR prepared for the project;
- d. Any proposed commercial development can be justified economically at the locations proposed based upon the developer's application articulating the viability of this type of facility at this location;

- e. Any exception from standard ordinance requirements is warranted by the design and amenities incorporated in the precise site plan, in accord with adopted policy of the planning commission and the city council. This required finding is not applicable to a Preliminary Planned District because the plans are conceptual and do not identify specific exceptions from standard ordinance requirements that will be warranted should a subsequent Precise Planned District be approved;
- f. The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development. The surrounding development is already built out to its planned intensity as single-family houses. The proposed Preliminary Planned District includes only onsite changes that would not affect planning and zoning of the surrounding properties or the community at large. The changes to the subject site are for a range of uses appropriate for the area, and site plan and architectural review of the site is required to ensure development is compatible with the community;
- g. The P district is in conformance with the general plan of the City of Fremont, including the policies set forth in the General Plan's Land Use, Community Character, Economic Development, and Conservation Elements and the provisions of the Kimber Study Area designation as enumerated within the staff report because it effectuates the K-S designation; the land use map will be conformed upon approval;
- h. Existing or proposed utility services are adequate for the population densities in that all utility services are present and capable of serving the proposed development.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) was prepared for the original proposed project and for alternatives to the original project. The EIR has been prepared pursuant to California Environmental Quality Act (CEQA) to consider physical changes to the subject site and the potential environmental effects caused by new development. The purpose of an EIR is to act as an informational document that:

- Describes the proposed project in substantial detail, provides the project objectives, establishes the environmental setting, and identifies the potentially significant environmental effects of the project;
- Identifies feasible ways to minimize the significance of potential environmental effects; and
- Discusses a reasonable range of alternatives to the project that minimize, reduce, or avoid identified environmental effects.

The EIR is not intended to recommend either approval or denial of a project. Instead, the EIR process is intended to inform decision makers and the public about the potential environmental effects of a project to facilitate informed decision-making. The EIR process includes preparation of a Draft EIR circulated for public comment for a minimum of 45 days and preparation of a Final EIR that includes responses to comments and changes to the original Draft EIR. The Draft EIR was circulated for public comment from August 3, 2012 to September 17, 2012. The Final EIR was made available to the public on October 5, 2012. The Draft and Final EIR are attached as Exhibit A.

The Planning Commission, as part of their deliberations and review, is required to make a recommendation to the City Council on the adequacy of the EIR in its description of the project and analysis of potential impacts. The City Council acting as the Lead Agency must certify the EIR as adequate prior to approving a project. An EIR includes all documentation prepared for analysis of a

project, including the Draft EIR combined with the Final EIR. To determine adequacy of an EIR, the Lead Agency must determine the sufficiency of the information in the document. Legal adequacy of an EIR is generally characterized by:

- All required contents are included;
- An objective, good-faith effort at full disclosure of potential environmental effects is provided;
- A reasonable treatment of issues is provided;
- Disagreement among experts is acceptable;
- Perfection is not required;
- Exhaustive treatment of issues is not required; and
- Minor technical defects are not necessarily fatal.

EIR Project Analysis:

The project description in the Draft EIR reflected to original project, which proposed development of the approximately 13 acre project site with the existing tennis club on the west half of the site and the addition of 18 single-family homes located along the perimeter of the easterly half of the site. The baseline condition of the environmental setting of the subject site is described in Section 2.3 of the Draft EIR and is summarized as the following:

- Site of Fremont Mission Hills Swim and Tennis Club on approximately 13 acres
- 6,030-square-foot clubhouse
- 13 tennis courts
- 1 swimming pool
- Centrally located fenced lawn area
- 12-foot pedestrian path along Almeria Avenue
- Vehicle driveway access to East Las Palmas Avenue and Almeria Avenue
- Rolling topography sloped upwards from west to east with isolated mounds and berming
- Substantial number of existing mature trees estimated at 612 trees on the site, with the majority being redwoods
- Approximately 3.9 acres of undeveloped open space

The impact analysis in the Draft EIR considered the proposed physical changes to the baseline conditions weighed against individual environmental setting and thresholds articulated in each impact section of the EIR. The Draft EIR identified potentially significant impacts in seven topical areas that require mitigation measures to ensure the project would have a less than significant impact on the environment. The seven topical areas are Aesthetics, Air Quality; Biological Resources; Cultural Resources; Geology and Soils; Hazards and Hazardous Materials; and Hydrology and Water Quality. The conclusion of the analysis was that the project would not result in any significant and unavoidable impacts. The Draft EIR found there to be less than significant impacts associated all other environmental topics, including Greenhouse Gas Emissions and Climate Change; Noise; Recreation; and Transportation.

All potentially significant impacts can be mitigated to a less than significant level. A complete mitigation matrix is included in the Draft EIR on page ES-5 that identifies each potential impact and its corresponding mitigation measure. A summary of the impacts and mitigations follows:

- **Aesthetics** – Potential for substantial tree removal that alters the natural open character of the project site in relation to the surrounding Kimber Park Development along the contextual urban edge of Fremont.

Applicable to Impacts From Potential Loss of Trees

- MM 4.1-1: Implement a Tree Protection and Replacement Plan.

- **Air Quality** – Construction of the proposed project would increase the short-term emission of air pollutants that could exceed established air quality standards.

Applicable to Short-Term Construction Emissions

- MM 4.2-1a: Implementation of Short-Term Construction Best Management Practices
- MM 4.2-1b: Compliance with Asbestos Containing Materials (ACM) and Lead Based Paint (LBP) Regulations During Renovation Activities.

- **Biological Resources** – Construction of the proposed project could result in the potential take of California Tiger Salamander or California Red Legged Frog during construction activities if precautionary measures are not taken; promote invasion by non-native species; result in tree removal, result in the injury or mortality of common bird species, raptors, and/or bat species.

Applicable to California Tiger Salamanders and California Red-Legged Frogs

- MM 4.3-7a: Limit Construction to Dry Season
- MM 4.3-7b: Temporary Construction Barrier
- MM 4.3-7c: On-site Construction Crew Education Program

Applicable to Invasive Weeds

- MM 4.3-10: Prevent spread of weeds and invasive species

Applicable to Common Nesting and Migratory Birds (Non-raptors)

- MM 4.3-12a: Seasonal Avoidance
- MM 4.3-12b: Pre-construction/Pre-disturbance Surveys
- MM 4.3-12c: Inhibition of Nesting

Applicable to Common Nesting Raptors

- MM 4.3-14a: Pre-construction/Pre-disturbance Surveys (for raptors other than burrowing owls and golden eagles)
- MM 4.3-14b: Breeding-Season Buffers (for raptors other than burrowing owls and golden eagles)
- MM 4.3-14c: Pre-construction Surveys for Burrowing Owls
- MM 4.3-14d: Passive Relocation of Burrowing Owls
- MM 4.3-14e: Breeding-Season Buffers (Golden Eagles)
- MM 4.3-14f: Golden Eagle Construction Monitoring

Applicable to Bat Roosts

- MM 4.3-15a: Pre-construction Survey
- MM 4.3-15b: Breeding Season Buffer
- MM 4.3-15c: Bat Relocation
- MM 4.3-15d: Alternative Roost Structure

- **Cultural Resources** – Construction activities associated with development within the project site could damage or destroy potentially significant unknown cultural resources, including historic, archaeological, or paleontological resources, and/or human remains.

Applicable to Archaeological Resources

- MM 4.4-1: Halt Work/Archaeological Evaluation/Site-Specific Mitigation

Applicable to Paleontological Resources

- MM 4.4-2: Halt Work/Paleontological Evaluation/Site-Specific Mitigation

Applicable to Disturbance of Human Remains Outside of Formal Cemeteries

- MM 4.4-3: Halt Work/Coroner's Evaluation/Native American Heritage Consultant/Compliance with Most Likely Descendant Recommendations
- **Geology and Soils** – The proposed project could experience structural damage from seismic-related ground-shaking and secondary events, such as liquefaction or landslides and pose a threat to the safety of people present within the area at the time. In addition, soils within the project site could result in subsidence or differential settlement, or be subject to expansion and contraction. These conditions could create structural damage. Construction activities associated with future development have the potential to result in an increase in short-term erosion.
 - Applicable to Seismic Ground Shaking*
 - MM 4.5-1: Preparation of Design-Level Geotechnical Report
 - Applicable to Soil Erosion*
 - MM 4.5-4a: Stabilization of Cut and Fill Slopes During the Rainy Season
 - MM 4.5-4b: Implementation of Storm Water Pollution Prevention Plan (SWPPP)
- **Hazards and Hazardous Materials** – The public and/or environment could accidentally be exposed to hazardous materials during construction of the proposed project.
 - Applicable to Disturbance of Contaminated Soil or Groundwater*
 - MM 4.7-3: Stop Work if Hazardous Materials are Discovered During Construction Activities
- **Hydrology and Water Quality** – Proposed drainage could result in off-site erosion and the proposed project could result in the degradation of groundwater quality if the groundwater well at the project site is not protected during construction activities.
 - Applicable to Degradation of Groundwater Quality*
 - MM 4.8-1: Implement Measures to Protect Groundwater Quality

The mitigation measures listed above would become conditions of approval for a project and will be included in the Mitigation Monitoring and Reporting Program.

EIR Alternatives Analysis:

The Draft EIR also considered five alternatives to the proposed project. The CEQA Guidelines require an analysis of a range of reasonable alternatives to the project, which would feasibly attain most of the project's basic objectives and avoid or substantially lessen any of the significant effects of the project. The emphasis of the analysis is a comparison of the anticipated impacts of each alternative to the impacts associated with the proposed project, including a discussion as to whether or not each alternative would reduce, eliminate, or create new significant impacts. The Draft EIR considered Alternative #1 No Project; Alternative #2 Expanded Club; Alternative #3 Clustered Residential No Club; and Alternative #4 Reduced Residential. Alternative #5 Enhanced Club and Aquatic Center with no residential development was included in the Final EIR (page 58 of Final EIR) at the request of the applicant. Alternative #5 represents the Preliminary Planned District application that is the subject of this report.

Alternative #5 of the EIR represents the proposed project. The comparative analysis found that all potential impacts of Alternative #5 would be similar to or less than those identified for the original project, with the exception of greenhouse gas emissions. Due to the increased activity of the club, impacts from greenhouse gas emissions would slightly increase; however, the comparative slight increase still results in a conclusion of a less than significant impact overall. Application of the mitigation measures found in the Draft EIR, and enumerated above, would ensure that impacts associated with the proposed project under Alternative #5 would be less than significant.

As part of the alternatives analysis, the EIR must identify an environmentally superior alternative and when that alternative is the No Project Alternative a substitute alternative must be identified. The Draft EIR found the No Project Alternative to be environmentally superior because there would be no change to the site. The summary table (page 58 of the Final EIR) found all of the remaining alternatives to have less environmental impacts than the proposed project and with application of mitigation measures to have similar impacts with no significant impacts. Alternative #3 for Clustered Residential was identified as having the least amount of impacts, and is, therefore, the environmentally superior alternative due to its restricted footprint of development and lower intensity of use compared to a recreational club.

EIR Public Review and Comment:

The Draft EIR was circulated from August 3, 2012, through September 17, 2012. Four comment letters were received during the public review period. Responses to comments are included in the Final EIR. During the Draft EIR public review period, a revised project was submitted by the applicant that deleted the residential component in favor of a new club. In addition to addressing comments from the public and agencies, the Final EIR included revisions and corrections to the Draft EIR. The most substantial revision included in the Final EIR was incorporation of the new Alternative #5 reflecting the applicant's revised project description. The Final EIR revisions do not add significant new information to the Draft EIR but provide clarification or make minor modifications to the text of an adequate EIR. Furthermore, no new environmental impacts not previously disclosed in the Draft EIR have been identified nor has the severity of a previously identified environmental impact been increased. Therefore, recirculation is not required pursuant to CEQA Guidelines Section 15088.5.

PUBLIC NOTICE AND COMMENT

Public hearing notification is applicable. A total of 351 notices were mailed to interested parties and owners and occupants of property within Planned District P-73-1 and otherwise within 300 feet of the site. The notices to owners and occupants were mailed, and a Public Hearing Notice was published by *The Argus* on October 2, 2012.

A description of the community input on the project during fall 2011 through mid-2012 is included in the background and previous actions section above. Neighborhood comments expressed up until September 2012 largely relate to their opposition to the previously proposed residential component on the site. The most recent letters received in early October relate to this private club application, and are included as Informational Enclosure 2.

ENCLOSURES

Exhibits:

- Exhibit "A" Draft and Final Environmental Impact Report (available at fremont.gov/ceqa)
- Exhibit "B" [Preliminary Planned District Site Plan](#)
- Exhibit "C" [Preliminary Planned District Rezoning Map](#)
- Exhibit "D" [Preliminary Planned District Regulations, Design Guidelines and Conditions](#)

Informational Items:

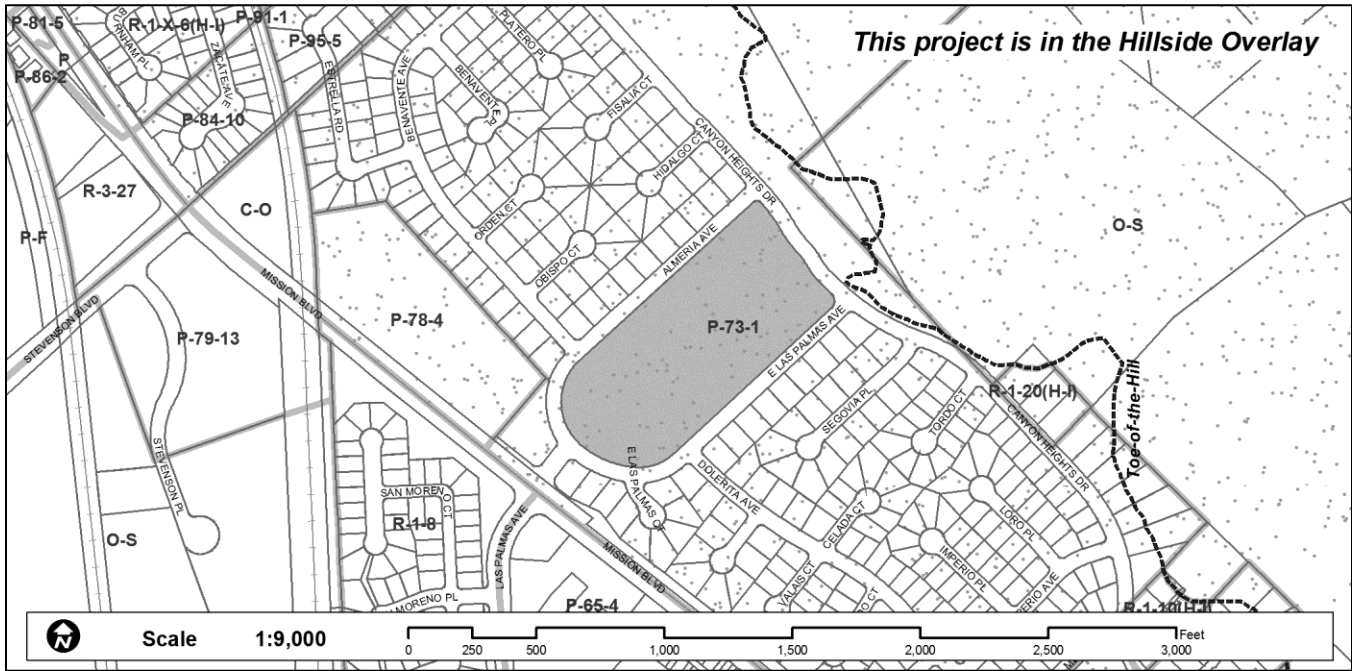
- Informational 1 [Applicant's Planned District Submittal Documents](#)
- Informational 2 [Correspondence Received](#)
- Informational 3 [Applicant's Club Comparison](#)
- Informational 4 [Kimber Study Area Text](#)

RECOMMENDATION

1. Hold public hearing.
2. Recommend that City Council Certify the Draft and Final Environmental Impact Report for the project as shown in Exhibit “A,” find that the Preliminary Planned District as proposed conforms with Alternative #5, and find that this action reflects the independent judgment of the City of Fremont.
3. Recommend that City Council find that the Preliminary Planned District is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use, Community Character, Economic Development, and Conservation Elements and the provisions of the Kimber Study Area designation as enumerated within the staff report.
4. Recommend that City Council find the Preliminary Planned District for the project as depicted in Exhibit “B” (Preliminary Site Plan [A1.00]), fulfills the applicable requirements set forth in the Fremont Municipal Code.
5. Recommend that City Council introduce an ordinance approving a rezoning from Planned District P-73-1 to P-2012-241 as depicted on Exhibit “C” (Rezoning Map) and approving the Preliminary Plans and Planned District Regulations and Design Guidelines as shown on Exhibits “B” and “C,” including sheet A1.00 consisting of the Preliminary Site Plan, based upon the findings contained in this report.

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan

